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EXCEPTION

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
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COMMISSIONER

Arizona Corporation Commission
DOCKETED

JAN 26 2001

DOCKETED BY

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IN THE MATTER OF THE NOTICE OF
PROPOSED RULEMAKING FOR THE
ENVIRONMENTAL PORTFOLIO STANDARD.

DOCKET NO. RE-00000C-00-0377

**THE SOLAR AND RENEWABLE ENERGY INDUSTRIES'
EXCEPTIONS TO THE RECOMMENDED ORDER**

York Research, Inc. and Arizona Clean Energy Industries Alliance ("Solar and Renewable Energy Industries"), with two minor but important exceptions, support the Administrative Law Judge's ("ALJ") Recommended Opinion and Order. The Recommended Order proposes an Environmental Portfolio Standard Rule ("EPS Rule") that is consistent with the Standard as approved by Chairman Mundell and Commissioner Irvin in Exhibit B of Decision No. 62506.

The Solar and Renewable Energy Industries support the proposed EPS Rule because it is in the public interest. Besides creating a workable framework that encourages investment in solar and renewable technologies in Arizona without adversely affecting the State's ratepayers; once implemented by Arizona's regulated load serving entities, the EPS Rule will increase energy capacity in the State and at the same time help diversify the State's fuel resource mix. Although many power plants are planned to go on-line in Arizona over the long-term, there remains an urgent need for increased energy capacity in the State,

1 immediately. For example, according to the Western System Coordinating Council, by 2002
2 Arizona's peak demand is expected to reach 15,000 MW, about 6,000 MW short of the State's
3 generation capacity. By 2008, this shortfall is expected to reach 8,500 MW. There is also an
4 ever increasing volatility and uncertainty in the availability and price of the natural gas energy
5 resource due to an over-dependence on natural gas as the fuel of choice for most modern
6 power plants. This volatility and uncertainty will likely intensify as more natural gas fired
7 power plants become operational. The EPS Rule provides a public benefit by creating
8 incentives for the State's regulated load serving entities to immediately increase Arizona's
9 energy capacity, and at the same time diversify the State's fuel resource mix, through the
10 utilization of solar resources and other environmentally friendly generation. The result will
11 be that the Commission's EPS Rule will aid in lowering Arizona's reliance on natural gas and
12 at the same time assist in increasing the State's energy capacity, hopefully averting a
13 California style electricity crisis.
14

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16 As explained above, although the Solar and Renewable Energy Industries
17 support the ALJ's Recommended Order, we believe that two minor but important amendments
18 to the Recommended Order would improve the Order. First, we propose that the
19 Recommended Order be amended to order a study by the Utilities Division Staff to determine
20 the feasibility of promulgating the EPS Rule under an Article separate from Article 16, Retail
21 Electric Competition Rules. Placing the EPS Rule under an Article separate from Article 16
22 would insulate the EPS Rule in the event that the courts ultimately invalidate the Retail
23 Electric Competition Rules as encompassed in Article 16. Second, we propose that the
24 Commission recognize and account for the unique characteristics of Arizona's rural
25
26

1 Cooperatives by considering AEPCO's proposed modification to the EPS Rule allowing the
2 Cooperatives a limited exemption from the EPS Rule. The Solar and Renewable Energy
3 Industries' exceptions and proposed amendments are as follows:

4
5 **1. THE PROPOSED EPS RULE HAS NOTHING TO DO WITH THE**
6 **RETAIL ELECTRIC COMPETITION RULES.**

7 As a matter of public interest and urgency, the Solar and Renewable Energy
8 Industries generally support Commission adoption of the Recommended Order promulgating
9 the EPS Rule under Article 16, Retail Electric Competition Rules. However, we also believe
10 that the ALJ's Recommended Order should be amended to order the Utilities Division Staff to
11 conduct a study to determine the feasibility of re-promulgating the EPS Rule in the near future
12 under an Article separate from Article 16. As explained in our October 5, 2000 Comments
13 and our November 16, 2000 Supplemental Comments, implementation of the EPS Rule does
14 not depend on retail electric competition to be successful. Furthermore, there is widespread
15 concern in the solar and renewable energy industries that court decisions adversely affecting
16 the legality of the Retail Electric Competition Rules under Article 16 may also inadvertently
17 and adversely affect the validity of the EPS Rule, simply because the EPS Rule was
18 promulgated under the same Article as the Retail Electric Competition Rules.

19
20 The Utilities Division Staff, in its October 26, 2000 Reply Comments, agreed
21 with the Solar and Renewable Energy Industries' that the EPS Rule should be promulgated
22 under a new Article independent of the Retail Competition Rules. Moreover, Staff suggested
23 that the new Article should also include: (1) the Commission's proposed Distributed
24 Generation and Interconnection Rules; (2) future rules related to reliability; and, (3) future
25 rules related to electric transmission planning and adequacy studies.
26

1 The ALJ, in her Recommended Opinion and Order, also concluded that it
2 might be reasonable to promulgate the EPS Rule under an Article separate from the Retail
3 Competition Rules. The ALJ, however, also correctly concluded that to effect such a change
4 would first require careful consideration of the inter-relationship of the Retail Electric
5 Competition Rules and the EPS Rule. Thus, given the public benefit from enacting the EPS
6 Rule sooner-than-later, the ALJ simply reserved consideration of promulgating the EPS Rule
7 under a new Article until a future date. The ALJ, however, never formally orders such a
8 study.
9

10 Although the Solar and Renewable Energy Industries agree with the reasoning
11 and conclusion of the ALJ, to insure that the EPS Rule does not become intertwined in the
12 legal tangle regarding the Retail Electric Competition Rules, we strongly recommend that the
13 Recommended Order be amended to include an additional ordering paragraph. This ordering
14 paragraph should specifically order the Utilities Division Staff to promptly conduct a study to
15 determine the feasibility and desirability of promulgating the EPS Rule under an Article
16 separate from Article 16 of the Retail Electric Competition Rules, and provide the results of
17 said study to the Commission for deliberation at a future Open Meeting. Accordingly, the
18 Solar and Renewable Energy Industries proposed a minor amendment to the Recommended
19 Order as follows:
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22 Page 7, Line 3: After the first ordering paragraph on the page:

23 INSERT new ordering paragraph: "IT IS FURTHER ORDERED that within
24 60 days of the effective date of this Decision, the Utilities Division Staff shall
25 complete a study to determine the feasibility and desirability of promulgating
26 the EPS Rule under an Article separate from Article 16 of the Retail Electric
Competition Rules and shall submit the results of said study for deliberation by
the Commission at the next regularly scheduled Open Meeting."

1 **2. THE RURAL ELECTRIC DISTRIBUTION COOPERATIVES ARE**
2 **UNIQUE.**

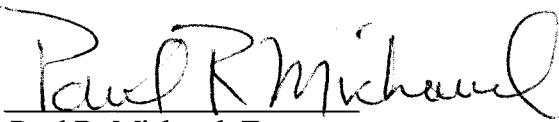
3 The Arizona Electric Power Cooperative, Inc. ("AEPCO") submitted
4 Comments on October 5, 2000 proposing that the EPS Rule be slightly modified to limit the
5 level of Cooperative participation to the amount of monies raised by the EPS surcharge only.
6 (AEPCO's October 5, 2000 Comments, Pages 3 - 4). The Solar and Renewable Energy
7 Industries do not oppose AEPCO's proposed modification to the EPS Rule. We understand
8 that the Cooperatives primarily serve rural Arizona, are non-profit and are owned by their
9 customers-members. Thus, the Cooperatives' mission is not to make a profit for shareholders,
10 but to make electric service available to consumers in rural Arizona at the lowest possible cost
11 without sacrificing system reliability. Accordingly, the Solar and Renewable Energy
12 Industries do not oppose AEPCO's proposed modification to the EPS Rule providing the
13 limited exemption for the rural electric cooperatives. AEPCO's proposed modification to the
14 EPS Rule would amend the ALJ's Recommended Opinion and Order as follows:
15

16 Page 12, Line 17 of Exhibit B: After the sentence ending "from such systems":
17

18 INSERT new paragraph: "Affected Utilities which are non-profit member
19 owned cooperatives are exempt from the portfolio percentage requirements set
20 forth in R14-2-1618.B1 except as provided in this subsection. Such
21 cooperative Affected Utilities shall collect the Environmental Portfolio
22 surcharge authorized in R14-2-1618.A.2 and shall apply the proceeds toward
23 meeting the renewable portfolio percentages. To the extent that the proceeds
24 of the Surcharge are insufficient to allow such cooperative Affected Utilities to
25 meet or exceed the renewable portfolio percentages, no further purchase of
26 installation of renewable resources or technologies shall be required"

1 RESPECTFULLY SUBMITTED this 26th day of January, 2001.

2
3 MARTINEZ & CURTIS, P.C.

4
5 By 

6 Paul R. Michaud, Esq.

7 2712 North Seventh Street

8 Phoenix, Arizona 85006-1090

9 Attorneys for York Research, Inc. and the Arizona
10 Clean Energy Industries Alliance

11
12 **An original and ten copies**
13 **of the foregoing, filed this**
14 **26th day of January, 2001**
15 **with:**

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 **A copy of the foregoing**
21 **mailed, faxed or hand-delivered**
22 **this 26th day of January,**
23 **2001 to:**

24 Jane Rodda
25 Administrative Law Judge
26 Arizona Corporation Commission
400 West Congress
Tucson, Arizona 85007

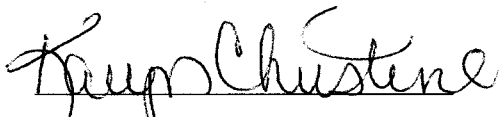
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Mailing list for Docket No. RE-00000C-00-0377



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